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Freedom in the External Relation of All Human Beings**

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# **The Final End of Kant's Philosophy of Right: Freedom in the External Relation of All Human Beings**

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*Please note that this is a draft. Comments are welcome and appreciated, [cr@ifs.ku.dk](mailto:cr@ifs.ku.dk)*

*An important interpretation of Kant's Philosophy of Right suggests that we should not regard political-legal institutions as mere means for realizing an independently conceived moral end. Particularly, it holds that the relationship between public Right and freedom is constitutive rather than instrumental. The "constitutive interpretation" argues this point mainly in relation to domestic Right and members' relation to their own state. The latter has resulted in a statist bias in the interpretation of Kant's notion of Right, which has not adequately dealt with the fact that Kant regards public Right as a system composed of three levels – domestic, international, and cosmopolitan Right. This paper suggests that rather than understanding the constitutive relationship between Right and individual freedom solely in terms of the relationship between the state and its members, we should understand it in terms of the relationship between Right at all three levels and "freedom in the external relation" of all human beings. This interpretation follows from Kant's acknowledgement of the fact that global interconnectedness has come so far that people and states affect one another across borders. Kant, however, speaks of the state as a "moral person," and some commentators argue that he is not committed to universal moral individualism. While it is true that Kant does not share the argument of contemporary cosmopolitans, who derive legal cosmopolitanism directly from an independent idea of the equal worth of all human beings, I argue that this does not mean that he is not committed to another, non-instrumental, form of universal moral individualism.*

Key words: cosmopolitanism, Immanuel Kant, Right, Perpetual Peace, freedom

## **I. Introduction**

Towards the end of "The Doctrine of Right," Kant writes that perpetual peace is "the entire final end of the doctrine of right" and "the highest political good" (MM 6: 355).<sup>1</sup> The notion that the absence of war should be a great political good and a precondition

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<sup>1</sup> References to Kant will be given with volume and page number of *Kant's gesammelte Schriften* (Kant 1900–). "MM" stands for *The Metaphysics of Morals*, "PP" stands for "Toward Perpetual Peace," and "TP" stands for "On the Common Saying: That May be Correct in Theory, but it is of no Use in Practice." For translations, see Kant (1996a). "Idea" stands for "Idea for a universal history with cosmopolitan aim," (Kant 2007).

for individuals enjoying their rights is obvious and unexceptional. However, Kant has a unique understanding of peace, Right, and their relationship that indicates a deeper insight than pointing out the instrumental relationship between absence of hostilities and well-functioning legal institutions.<sup>2</sup> This insight in Kant is bound up with the suggestion that peace is a juridical idea, or an *idea of Right*, as distinct from both an empirical concept and an ethical idea.<sup>3</sup> Moreover, the notion of peace as the final end of the doctrine of Right is connected to Kant's idea that "the general concept of public right" is composed of three levels – domestic, international, and cosmopolitan Right (MM 6: 311). For Kant, the three levels of public Right are all necessary and form an integrated *system*.<sup>4</sup>

Contemporary cosmopolitans tend to begin their theories from an idea of the equal moral worth of individual human beings and *derive directly* from this idea a form of legal and political cosmopolitanism.<sup>5</sup> While many political theorists and philosophers regard this form of cosmopolitanism as “Kantian,” contemporary Kant scholarship seems to agree that Kant does not share this structure of argument, where one derives a global legal-institutional system directly from a notion of moral cosmopolitanism.<sup>6</sup> In order to understand the distinctiveness of Kant’s cosmopolitanism, we must go beyond the type of theories where one in a first step simply asserts the equal moral worth of all human beings and then in a second step suggests that this moral basis requires a form of legal and political cosmopolitan institutions as a secondary means

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<sup>2</sup> At PP 8: 343, Kant famously distinguishes peace and “suspension of hostilities.”

<sup>3</sup> I render the noun *Recht*, which can denote law, justice, and right, as “Right” (with capital R) in order to emphasize its unique meaning in Kant.

<sup>4</sup> B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary*. Cambridge: Cambridge University Press, 2010, 188; Kathrin Flikschuh, "Kant's Sovereignty Dilemma: A Contemporary Analysis," *The Journal of Political Philosophy* 18/4 (2010): 469-493, pp. 470-1; Jakob Huber, “No right to unilaterally claim your territory: On the consistency of Kantian statism,” *Critical Review of International Social and Political Philosophy* X/X (2016): 16; Howard Williams, "Kantian Underpinnings for a Theory of Multirights," in *Kantian Theory and Human Rights*, ed. Andreas Follesdal and Reidar Maliks. London and New York. Routledge, 2014, 8-26, pp. 10, 14.

<sup>5</sup> Simon Caney, for example, claims that cosmopolitan theories begin from an idea of moral personality that they regard as shared among all human beings and that they proceed from that basis (Caney 2005: 35f). For the distinction between legal and moral cosmopolitanism, see Thomas Pogge, *World Poverty and Human Rights*, second ed. Cambridge: Polity, 2008, 175. See also Charles Beitz, “Cosmopolitan liberalism and the state system,” in *Political Restructuring in Europe: Ethical Perspectives*, ed. Chris Brown (London and New York: Routledge, 1994), 123-136, pp. 123-26.

<sup>6</sup> The point is made explicitly by Flikschuh, "Kant's Sovereignty Dilemma," 470.

to its realization.<sup>7</sup> Still, I argue, this does not entail that we with Kant must abandon any commitment to a universal moral individualism, as some have suggested, but that we must understand the commitment in a new and different way.

It is important to remember that we find Kant's own thoughts on the international and cosmopolitan levels of social and human interaction in his political essays and in his *Rechtslehre* or "Doctrine of Right"— what I shall refer to under one as his Philosophy of Right<sup>8</sup> – and not in his moral philosophy. Recent Kant scholarship has shown a new appreciation of Kant's Philosophy of Right and provided new interpretations of its meaning and significance. In particular, it has suggested that we cannot regard political-legal institutions as mere means for realizing an independently conceived moral ideal.<sup>9</sup> The idea of equal external freedom is evidently central to Kant's Philosophy of Right. Indeed, in "Theory and Practice," Kant writes that Right "proceeds entirely from the concept of *freedom* in the external relation of people to one another" (TP, 8: 289). However, according to what I shall call the constitutive interpretation, this notion of freedom cannot be seen as an independently conceived end for which a public legal order is a mere instrument. Kant scholars have argued this point mainly in relation to domestic law and members' relation to their own state.<sup>10</sup> Thus, the constitutive interpretation of Right has not adequately dealt with the fact that Kant regards public Right as composed of three levels. Instead, the focus has been on domestic Right and the constitutive relationship between this level of Right and the external freedom of individual persons. This has resulted in a statist bias in the constitutive interpretation of Kant's Philosophy of Right. In addition, the interpretation has been employed for conservationist arguments for the territorial rights of legitimate states.<sup>11</sup>

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<sup>7</sup> On this issue in relation to Kant's approach in the *Rechtslehre*, see my "Kant and the Critique of the Ethics-First Approach to Politics," *Critical Review of International Social and Political Philosophy* (2017, forthcoming).

<sup>8</sup> These writings include "Theory and Practice," "Perpetual Peace," "Idea for a universal history with cosmopolitan aim," and "The Doctrine of Right."

<sup>9</sup> Most important here is Arthur Ripstein, *Force and Freedom*.

<sup>10</sup> Ripstein, *Force and Freedom*; Christian F. Rostbøll, "Kant, Freedom as Independence, and Democracy," *The Journal of Politics* 78, No. 3 (2016): 792-805; "Kant and the Critique of the Ethics-First Approach to Politics," *Critical Review of International Social and Political Philosophy* (2017, forthcoming); Ariel Zylberman, "The Public Form of Law: Kant on the Second-Personal Constitution of Freedom," *Kantian Review* 21.1 (2016): 101-126.

<sup>11</sup> Anna Stilz, "Nations, States, and Territory," *Ethics* 121/3 (2011): 572-601, esp. 580-81, 584. For an explanation and critique of the "conservation principle," see Huber, "No right to unilaterally claim your territory: On the consistency of Kantian statism."

Domestic public law, however, constitutes relations of equal freedom only for members and hence can provide a justification only domestically. Insofar as people affect one another across state borders, a constitutive argument for public law and political institutions must apply to the global level. Therefore, I shall argue that we should see the constitutive relationship between Right and individual freedom as a matter of the relationship between Right *at all three levels* and freedom in the external relation of *all human beings* to one another – rather than regarding it solely as a matter of the relationship between the state and its members.

To be sure, Kant's system of public Right includes not only human beings as moral persons but also states.<sup>12</sup> The three-level system of domestic, international, and cosmopolitan Right presupposes that states have legal and moral personality. By definition, there can be no international Right without nations or states.<sup>13</sup> Next, states to be states and secure the rights of their subjects must be sovereign, according to Kant. However, the very idea of public Right involves an idea of legal, that is enforceable, duties, and thus there can be no international and cosmopolitan Right if states are sovereign – for a sovereign has only rights and no legal duties (MM 6: 319). Moreover, in this layered system with different moral entities – individuals and states – it becomes unclear what the exact end of public Right is. In the "Introduction to The Doctrine of Right," it is abundantly clear that the end of Right is the freedom and equality *of individuals*. Thus, as a system, one would expect public Right at all three levels to be understood, by Kant, as a system of equal freedom of individual human beings. Yet, when we move to international Right, it seems Kant is committed, rather, to a system of equal freedom *for states*. The juridical notion of peace here connotes the condition in which conflicts between states are arbitrated by law rather than decided by force. Some commentators even hold that Kant is not committed to universal moral individualism but, rather, a morality of sovereign states.<sup>14</sup> However, if peace were solely about legal adjudication between states with given jurisdictions and territories, this would make the connection between the rights of individual human beings and peace indirect and empirical rather than direct and categorical (moral). Moreover, it is unclear where cosmopolitan Right fits into this picture.

Kant himself was struggling to make the three different levels of Right fit into one coherent system. This is most evident in his ambivalence between a state of nations (*Völkerstaat*) with public laws and coercive force and a voluntary league of nations

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<sup>12</sup> As Otfried Höffe (*Kant's Cosmopolitan Theory of Law and Peace*, 140 and 201) notes, Kant's cosmopolitanism is complementary rather than exclusive.

<sup>13</sup> Kant uses "nation" and "state" synonymously, see e.g. MM 6: 311.

<sup>14</sup> Flikschuh, "Kant's Sovereignty Dilemma."

(*Völkerforbund*).<sup>15</sup> His troubles here are not merely empirical but normative and conceptual. I shall not focus on Kant's ambivalence regarding global institutions but take us one step back to the very meaning and foundation of Right, specifically to the mentioned idea that Right “proceeds *entirely* from the concept of *freedom* in the external relation of people to one another” (TP, 8: 289, first emphasis added). Kant's argument would lack coherence and unity, if the three levels of public Right were based on different principles. Moreover, Kant has only one principle of Right, one Universal Principle of Right, and this concerns the equal freedom of *individual human beings* (MM 6: 230). And there is only one innate right of humanity, which again belongs to persons in virtue of their humanity, and not to states (MM 6: 237). For Kant's system of Right to have unity and coherence, perpetual peace must have a direct – that is, non-instrumental and categorical – relation to the equal freedom of individual human beings. Only in this way can it be “the entire final end of the doctrine of right.” Or so I argue.

In the next section, I explain the constitutive interpretation of Right and lay out the connection between this interpretation and a relational notion of freedom. Moreover, I argue that former versions of the constitutive interpretation have had a statist bias. The Kantian focus on the state and the idea that public law is not a mere instrument to the fulfillment of individual ends may be thought to imply that Kant is not a universal moral individualist. However, in section III, I show that Kant is indeed a universal moral individualist, because the basic principles of his Philosophy of Right concerns human beings rather than states. Section IV takes up Kant's distinction between provisional and conclusive rights, and argues that the domestic level of Right cannot secure the conclusiveness of rights independently of the international and cosmopolitan levels of Right. This is the case because we cannot neatly separate the relations a state has to its own members and the relations it has to other states and their members. In section V, I show that statist interpretations of Kant fail, because they cannot explain how the acts of a state, as “simply a power,” toward other states and foreigners can be justified. Section VI concludes that Kant's view of Right requires that we take a systemic perspective encompassing all the relations in which human beings stand to one another and aim at that all of these are ordered by public laws securing the universal co-existence of freedom.

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<sup>15</sup> Byrd and Hruschka, *Kant's Doctrine of Right*, 198-200.

## II. The constitutive interpretation of Right

I begin from the fact that Kant regards peace as a matter of Right, rather than of ethics: "This rational idea of a *peaceful*, even if not friendly, thoroughgoing community of all nations that can come into relations affecting one another is not a philanthropic (ethical) principle but a *juridical* principle [ein *rechtliches* Prinzip]" (MM 6: 352).<sup>16</sup> A juridical principle is a principle for the public and positive legal ordering of external relations between persons, rather than a principle persons must make the motive of their actions (MM 6: 213-14, 218-21). Insofar as peace relates to the community of all nations, to speak of it as a juridical principle indicates that it is a principle for the right ordering of a global public legal order. Moreover, to speak of peace in terms of Right means that it is a condition that must be *established* by agreement and one that must provide *assurance* of compliance to the parties. Peace cannot merely be based on good will or sympathy; it requires the rules and assurance provided by a juridical condition (PP 8: 349).

Central to public Right are public and positive laws, and a common will under which people – or peoples – affecting one another are subjected. "Public right is therefore a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution (*constitutio*), so that they may enjoy what is laid down as right" (MM 6: 311, emphases changed). Moreover, coercion is *internal* to the very concept of Right. Indeed, "Right and authorization to use coercion ... mean one and the same thing" (MM 6: 232). Right, in Kant, however, is not merely an empirical description of positive law. The reason why Right is internally connected to coercion is that equal external freedom is possible only if those who infringe on the equal freedom of others are hindered in doing so by coercive laws, "as a *hindering of a hindrance to freedom*" (MM 6: 231). Universal coexistence of individual freedom is what Right means in Kant.<sup>17</sup> Thus, he posits The Universal Principle of Right (UPR): "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (MM, 6: 230). Notice that the UPR is

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<sup>16</sup> Mary Gregor translates "ein *rechtliches* Prinzip" as "a principle *having to do with rights*," but I think it more appropriate with "a juridical principle" to emphasize the demarcation of the juridical sphere in Kant.

<sup>17</sup> [Höffe 2006, 156]

not directed to the individual, in the same way that the categorical imperative is, but is a principle for the right ordering of the public legal order.<sup>18</sup>

According to the constitutive interpretation, we would fail to acknowledge one of the central insights of Kant's Philosophy of Right, if we saw political-legal institutions as mere instruments for the realization of a moral ideal. Kant's position, therefore, is best understood in contrast to an instrumental view of public law. Political-legal instrumentalism, as we might call the contrasting view, perceives political and legal institutions as contingent means for the realization of independently conceived valuable ends. The ends are independently conceived in the sense of being fully describable without any reference to the institutions that are the means to their realization.<sup>19</sup> A political legal instrumentalism based on freedom would regard public law or a political entity as justified if it promoted an independently conceived idea of freedom. Kant, to be sure, places the idea of freedom at the center of his Philosophy of Right, but it would be a mistake to think that he justifies public law merely as a means to realize some value or good that the individual can understand independently of his or her relations to others as organized by public law. Rather, the meaning and value of freedom is partly constituted by – partly created and made conceivable by – public law (MM 6: 316).<sup>20</sup>

Two aspects of the idea of the constitutive relationship between public law and freedom are especially important for our discussion of the relationship between individuals and states, as well as for the question of Kant's individualism. First, the idea that freedom depends on public law - "the *dependence* of all upon a common legislation" (PP, 8: 349–50, emphasis in original; see also MM 6: 316) – seems to give a strong role to the state, at least if we regard the state as the actualization of the idea of public law or the public legal order.<sup>21</sup> If individual freedom is bound up with the existence of the state, one cannot give priority to individual freedom over the state. Second, external freedom is not justified in Kant from the first-person perspective of

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<sup>18</sup> Thomas W. Pogge. "Is Kant's *Rechtslehre* a 'Comprehensive Liberalism'?" In: Elisabeth Ellis, ed. *Kant's Political Theory: Interpretations and Applications*. University Park, Pa: Pennsylvania State University Press, 2012, pp. 81-82.

<sup>19</sup> See Alon Harel, *Why Law Matters* (New York: Oxford University Press, 2014) and Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, (Cambridge, MA: Harvard University Press, 2009) who both describe this legal instrumentalism and advance non-instrumental alternatives.

<sup>20</sup> Rostbøll, "Democracy as Good in Itself"; "Kant, Freedom as Independence, and Democracy," 792, 795-7.

<sup>21</sup> Ripstein (*Force and Freedom*) speaks of the "public legal order"; Zylberman ("The Public Form of Law") of "public law." The relationship between these ideas and the state are not always clear.



the individual, but rather denotes a relationship between a plurality of human beings living under shared law. This is why he speaks of “freedom in the external *relation of people to one another*” [“Freiheit im äußeren Verhältnisse der Menschen zueinander”] and notes that Right has “nothing to do with the end that all [people] naturally have” (TP, 8: 289, emphasis added). In this way, we might say that external freedom for Kant is not first-personal but rather second-personal or relational.<sup>22</sup>

A first-personal view of freedom takes the perspective of the first person singular without reference to the relations she has to other persons. I take the first personal view of freedom, for example, when I ask if I am free to act without obstruction or to set my own ends. When freedom is defined as a matter of non-interference, this is a first-personal view of freedom, because a person can understand what it means to act without interference without reference to the relations she has to other persons.<sup>23</sup> Kant’s view of freedom should be seen in contrast to this first personal view. Freedom, in Kant, is second personal or relational, because it is not a question of what one can have or get but rather of the relations in which one stands to other persons, of what one can demand of others within those relations. This does not mean that setting ends for oneself is irrelevant in the Kantian account, but this is not an end that explains the meaning and value of freedom, as it does on a first personal account. Rather, what comes first in Kant’s view is the relational norm that others are not entitled to set purposes for you because you are not their subordinate.<sup>24</sup> Freedom in Kant’s Philosophy of Right is a matter of which standing one has among other people, that is, of one’s rights and duties in relation to other human beings. These rights and duties are defined by public law, which shows the connection between the relational view of freedom and the constitutive interpretation of Right. Freedom, as a matter of the external relation of individuals to one another, is constituted by public Right. From the first personal perspective, law will be seen as limiting freedom, while from the relational or second personal perspective, public law, when in conformity with Right, will be seen as constitutive of freedom (MM 6:315-16).<sup>25</sup>

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<sup>22</sup> Zylberman, “The Public Form of Law,” 2016: 102-3, 108-111. For the distinction between first and second personal views, see Stephen Darwall, *The Second-Person Standpoint: Moral, Respect, and Accountability* (Cambridge, MA: Harvard University Press, 2006), 3-10.

<sup>23</sup> Thomas Hobbes’ definition of freedom is the classical example: “Liberty, or freedom, signifieth (properly) the absence of opposition; (by opposition, I mean external impediments of motion;).” Thus, a free man is someone who “finds no stop, in doing what he has the will, desire, or inclination to do.” Hobbes, *Leviathan* (Oxford: Oxford University Press, 1996), ch. XXI, pp. 139 and 140.

<sup>24</sup> Ripstein in *Freedom and Force: Essays on Kant’s legal Philosophy*, ed. Sari Kisilsky and Martin J. Stone (Oxford: Hart Publishing, 2017): 183-217, pp. 194-96

<sup>25</sup> Zylberman, (“The Public Form of Law,” 104-105).

The sovereign state plays a prominent role in the constitutive and relational interpretation of Kant, because it is seen as the precondition for the realization of external freedom. More specifically, a public legal order qua a state solves three problems in the state of nature, namely the problem of unilateral determination of rights, the problem of assurance and enforcement of rights, and the problem of indeterminacy of rights.<sup>26</sup> The state provides procedures for establishing a common will, which can lay down what is right, and which has the power to assure everyone subject to it of the security of their rights, as well as judge cases of indeterminacy. For Kant this is particularly important in relation to property rights, which have a conventional element and can be enforced in accordance with the coexistence of freedom only by a common will, which has no purposes of its own. If property rights were enforced by a unilateral will, some would be subject to the will or purposes of another (MM 6: 256). Moreover, for Kant, in order for the state to be a state, the ruler must be sovereign and have no legal duties to his subjects "that he can be coerced to fulfill" (MM 6: 319). Only a sovereign state can solve the three defects of the state of nature. Following this line of reasoning and interpretation of Kant, it is tempting to conclude that "recognizing the equal sovereignty of states is part and parcel of respecting each person's right to freedom."<sup>27</sup> This conclusion, however, is premature, because it would entail that sovereign states could secure freedom and rights on their own with no other levels of Right. Thus, there is a tendency to assume that the idea of the constitutive relationship between the state as a public legal order and freedom as independence must lead to the conclusion that only domestic Right is constitutively related to individual freedom, while the two other levels of Right exist only as instruments for securing domestic right. But that is not Kant's view – nor is it a tenable view.

While I agree with the interpretation that emphasizes the constitutive relationship between public law or Right on the one hand and external freedom on the other hand, I think it is a mistake to tie the idea of public law exclusively to the sovereign state, particularly to any old state. Right, in Kant, is not merely a description of the legal order of any particular state (MM 6: 229-230).<sup>28</sup> First, *Recht* is a normative idea and not an empirical description. Right has normative elements; there are content constraints on what the sovereign can decide in order for its commands to be proper laws or *Recht*. This is the reason why Kant posits a Universal Principle of Right and

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<sup>26</sup> Ripstein, *Force and Freedom*, 145-181.

<sup>27</sup> Mikalsen, "No cosmopolitan morality without state sovereignty," 2017, 9. See also Stilz' argument for states' rights to their territory, which she sees as based on what she takes to be a Kantian idea, namely that states "are necessary to provide a unitary and public interpretation of rights of individuals" (Stilz 2011, 580).

<sup>28</sup> See also (Höffe 2006, 82; Wood 2002, 6).

an innate right of humanity. Second, “we have to take into consideration not only the relation of one state to another as a whole, but also the relation of individual persons of one state toward the individuals of another, as well as toward another state as a whole” (MM 6: 343-344).] “Right” concerns not merely the internal legal order of states (domestic Right) but also the relationship between states (international Right) and the relationship between states and foreign individuals (cosmopolitan Right). In Kant, there is one “general concept of right” with three levels, and “if the principle of outer freedom limited by law is lacking in any of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse” (MM 6: 311).

The mistake is to read the constitutive view as a matter of the mutual dependence or co-constitutiveness of *domestic* law and individual freedom, rather than of public Right in all its three levels on the one side and external freedom on the other side. Even if the public law of the state is not seen in descriptive or positivistic terms internally, that is, even if it is recognized that the state must honor the constraint set up by the UPR and the innate right to freedom of its own members, the statist interpretation still views the global level in empirical terms. That is, it takes for granted existing boundaries and territories. The argument that only states that treat their own subjects according to the principles of (domestic) Right have a right to territorial integrity similarly treats existing territories of internally legitimate states descriptively.<sup>29</sup> However, theorizing the authority and legitimacy of states only in relation to how they treat their own subjects both contradicts Kant’s view of Right as composed of three, mutually dependent levels, and creates an untenable schism between a normative conception of Right at the domestic level and a (at least partly) contingent one at the international and cosmopolitan levels.

Following from the preceding arguments, my suggestion is that we should *not* see the constitutive relationship between Right or public law as a matter only of the relationship between the state and its citizens, but between Right *at all three levels* and “freedom in the external relation” of *all human beings*. As mentioned, the core idea of Kant’s Philosophy of Right is that public law is not justified merely as the best means to a predefined end, but rather as creating a specific relationship between individual human beings. There is a risk in the constitutive interpretation to fail to incorporate this insight, when it comes to international and cosmopolitan Right. If individual freedom is fully and conclusively constituted by the state, the two other levels of Right can at best have an instrumental relationship to freedom.

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<sup>29</sup> For example, Anna Stilz’ (2011) Kantian argument for territorial rights, “Nations, States, and Territory,” *Ethics* 121/3 (2011): 572-601.

It might be said that international Right constitutes not the freedom of individual human beings but the freedom or sovereignty of individual states. But this answer raises the question of how the constitution of equal state sovereignty relates to the fundamental meaning and role of Right, which is to create the right external relation between individual human beings, or the universal coexistence of individual freedom. I discuss this question in the following sections.

### III. States and universal moral individualism

I have argued that we should see all three levels of Right in relation to the external freedom of individual human beings. This interpretation entails that Kant is a universal moral individualist of sorts. However, prominent Kant scholars have argued that Kant is not committed to “universal moral individualism” but, rather, provides “a morality of sovereign states.”<sup>30</sup> There are two main reasons to think that Kant is not committed to universal moral individualism that are relevant for our discussion.<sup>31</sup> First, Kant speaks not only of the right of individuals but also speaks of the state “as a moral person” that should not be “made into a thing” (PP 8: 344).<sup>32</sup> Second, in justifying Right, Kant does not take the first-personal perspective of an individual but rather the second-personal view of relations between persons. I shall argue that none of these reasons are sufficient to show that Kant is not a universal moral individualist. While it is true that Kant rejects one form of moral individualism, he does not reject all types of universal moral individualism. Indeed, from Kant we might learn to think of universal moral individualism in a new and different way than what has become standard.

To make headway in this discussion, we must begin by defining moral (or value) individualism. Some define *value individualism* as the view that “only the lives of individual human beings have ultimate value, and collective identities derive their

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<sup>30</sup> Flikschuh 2010: 470, 469.

<sup>31</sup> Flikschuh argues that Kant is not committed to moral individualism in two different connections, the first in a discussion of Kant’s view of state sovereignty (2010: 469-70), and the second in a discussion of Kant’s view of autonomy (“Personal Autonomy and Public Authority,” in *Kant on Moral Autonomy*, ed. Oliver Sensen, Cambridge: Cambridge University Press, 2013, 169-189, pp. 172-3).

<sup>32</sup> On the state as a moral person in Kant, see B. Sharon Byrd, “The State as a ‘Moral Person,’” in *Kant and Law*, ed. B. Sharon Byrd and Joachim Hruschka (Aldershot: Ashgate, 2006): 379-97; Holland, 2017, 601-607.

value from their contribution to the lives of individual human beings.”<sup>33</sup> This view is contrasted with *value collectivism*, “the view that a collective entity can have value independently of its contribution to the wellbeing of individual human beings.”<sup>34</sup> Framed in this way, it is counterintuitive to endorse value collectivism and it becomes unclear who would endorse such a view. We should note two things about these definitions. First, both value individualism and value collectivism are here defined as a matter of wellbeing, that is, internal states of being. This assumes a first-personal or a third-personal account of morality, which focuses on what ought to be brought about, and excludes relational accounts, which focus on the status persons ought to have in relation to one another. Second, and relatedly, these definitions force us to choose between an individualist view, in which collective entities can have only instrumental value and a collectivist view, in which the value of the collective entity is independent of individuals. This again excludes relational views such as Kant’s, which is neither instrumentalist nor independent of individuals.

If we define a moral individualist theory as one, which regards morality as a question of what is good or to the benefit of the individual from his own, isolated perspective, Kant’s Philosophy of Right is not a moral individualist theory – nor is his moral theory as a whole. But obviously this does mean that he accepts a form of collectivism, according to which morality is based on what is good for some collective entity understood independently of the individuals who compose it. Rather, Kant rejects the whole idea that morality is about what is good for or benefits someone, be it an individual person or a collective entity such as a state. In Kant, morality, including Right, is about how persons relate to one another, about their external standing among one another, and not about internal states of being. Right concerns “*that relation of human beings among one another* that contains the conditions under which alone everyone is able to enjoy his rights” (MM, 6: 305-306, emphasis changed).

The question of freedom, therefore, should not be approached from the perspective of the first-person singular, but from the shared perspective of “a multitude of human beings [who] affect one another” (MM, 6: 311).<sup>35</sup> Right is not about what the individual person can gain, but how a plurality of persons who inevitably affect one another ought to be related. This view is still individualistic rather than collectivistic, since it is about how *individual human beings* relate to one another, and not about the

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<sup>33</sup> Michael Hartney, “Some Confusions Concerning Collective Rights,” *Canadian Journal of Law and Jurisprudence* IV, no. 2 (1991): 293-314, p. 297.

<sup>34</sup> Ibid. See also Andrew Altman and Christopher Heath Wellman, “The Deontological Defense of Democracy: An Argument from Group Rights,” *Pacific Philosophical Quarterly* 89 (2008): 279-293, p. 285.

<sup>35</sup> Rostbøll, “Kant, Freedom as Independence, and Democracy,” 797.

good of some collective entity understood independently of the individuals composing it. If we take moral individualism to mean that we can derive what is morally good from what is individually good (good for me seen in isolation from others), then Kant is not a moral individualist. But if we include in the idea of moral individualism theories that focus on how individual persons ought to stand in relation to one another, then Kant *is* a moral individualist.

Moral individualism is sometimes rejected because it is thought to entail that collective goods can have only instrumental or causal value. Joseph Raz, for example, thinks moral individualism entails this view of collective goods and rejects it, because he thinks collective goods can have intrinsic value, too.<sup>36</sup> Kant, according to the constitutive interpretation, rejects the idea that a public legal order has value only as an external causal means to individual ends. We have said that the relationship between the public legal order and individual freedom is constitutive rather than instrumental, but does that mean that a public legal order cum the state is intrinsically valuable? I think the public legal order or state is intrinsically good only in one of three ways things can be intrinsically good, according to Raz. That is, the state can be a *constituent good*, because it creates relations among individuals the value of which cannot exist or even fully be conceived without the idea of a public legal order. But this does not mean that the state is valuable *in itself* “irrespective of what else exists,” or that the state is an *ultimate value* in the sense that it can explain “the value of non-ultimate goods.”<sup>37</sup> In Kant, the value of the state cannot be understood irrespective of the existence of individuals and its value cannot be understood as bestowing value on other, non-ultimate goods. Thus, even if the value of the state is not merely instrumental in Kant, its value is also not intrinsic, if we regard “intrinsic goodness” to include unconditionality and ultimateness.<sup>38</sup>

If we see Right in Kant not as a description of an actual legal order, domestic or global, but as a normative idea, we must take outset in what Kant writes about Right in the “Introduction to The Doctrine of Right.” The “Introduction” provides the definition of Right and can be seen as the moral ground of the entire doctrine of Right, including international and cosmopolitan Right. In the “Introduction,” Right is defined as a relation between individual choices under universal law (MM 6: 230), and the Universal Principle of Right mentions only individual persons. Moreover, there is only one innate right, and it belongs to the individual human being: “Freedom

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<sup>36</sup> Raz, *The Morality of Freedom*, 198-203.

<sup>37</sup> Raz, *The Morality of Freedom*, 200.

<sup>38</sup> Thus, the state is not an intrinsic good, as this is defined by Christine Korsgaard, “Two Distinctions in Goodness.” In *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 249-74.

(independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right *belonging to every man by virtue of his humanity*" (MM, 6: 237, emphasis changed). The UPR and the innate right to freedom fit badly with an idea of some collective identity being good in itself and an ultimate value. This is true even if we accept the constitutive interpretation, according to which freedom should not be understood as an individual possession or an individual good, but rather as a rightful relation among persons. The only way in which we can give the state equal value to the individual human being is by positing a different concept of Right for the international realm than for the domestic realm. However, for Kant there is only one concept of Right, and it concerns the universal coexistence of individual freedom.

In order to understand Kant's unique view of Right in and beyond states, it is crucial to appreciate that he does not merely see political-legal institutions as contingent means to the realization of ends that are defined independently of these institutions. For this reason, Kant can also not regard public legal orders as dispensable means that can be exchanged for other means. For the end to be realized is partly constituted by the existence of a public legal order. However, we go wrong if we take these important insights to imply that Kant regards existing *states* as ends in themselves on par with individual human beings. The latter is a mistake, both because a public legal order should not be equated with the empirical state, as argued in the previous section, and because of Kant's universal moral individualism, as explained in this section. In the following sections, I provide further argument for this conclusion.

#### **IV. Provisional and conclusive rights**

Statist interpretations are correct to emphasize that Kant regards a public legal order as indispensable for freedom and the enjoyment of Right. Only a state, they can point out, has "a collective general (common and powerful will)" that can provide assurance of enforcement of "freedom in accordance with universal laws" (MM 6: 256). As mentioned, Kant makes this argument in connection with the question of property rights. Only a common will, and not a unilateral will, can "serve as a coercive law for everyone with regard to possession that is external and therefore contingent" (MM 6: 256). In the same connection, Kant introduces a distinction between "provisional rights" and "conclusive rights." In the state of nature, individuals may have provisional rights to property "in anticipation and preparation for the civil condition" but these rights are only made conclusive by the common and coercive will of the state (MM 6: 257). Our question is whether this argument entails that Kant must

regard domestic Right as not only necessary but also sufficient for conclusive possession.

We should consider here what exactly Kant takes “conclusive possession” to be. More precisely, we must ask if an individual state on its own, with no regard to other states and their subjects, conclusively can determine the rights of its own citizens, particularly their property rights. Thus, in the paragraph just quoted, Kant writes, “possession found in an *actual* civil condition would be *conclusive* possession” (MM 6: 257). First, it is important to understand that Kant is not making a purely empirical argument of the Hobbesian kind, which says that only under the sword of the sovereign is the property of the subjects secure.<sup>39</sup> For Kant, the civil condition solves a moral and not merely an empirical problem.<sup>40</sup> That is, it solves the problem not only of establishing and monopolizing sufficient power to secure property and hold down conflict, but also the moral problem of realizing the *principle* that no one should be subject to the unilateral will of another. Thus, if the notion of conclusive possession is to fit into Kant's normative conception of Right, it must satisfy the normative criterion presented in the UPR, as well as realize the innate right to freedom as independence. We see this also from the fact that when Kant in this context speaks of a “civil condition” (*eine Zustände einer bürgerlichen Verfassung*), he is not speaking of any old state but a state that does not “infringe upon ... a priori principles for a civil condition” (MM 6: 256).

Second, if an individual state on its own conclusively could secure the rights of its subjects, it is unclear why Kant regards the two other levels of Right, international and cosmopolitan Right, as part of *the same* general concept of Right. Alternatively, we have the possibility that these further levels of Right are needed for merely instrumental reasons, for example, that peace would be a mere causal means to protect the individual states' capacity to uphold their internal rightful condition. But this would make naught of Kant's claim that “universal and lasting peace constitutes not merely a part of the doctrine of right but rather the entire final end of the doctrine of right within the limits of mere reason” (MM 6: 355). In the same section, Kant clearly sees peace in normative and categorical terms, *and* as a condition of the conclusiveness of property rights. Thus, he continues: “the condition of peace is alone that condition in which *what is mine and what is yours for a multitude of human beings* is secured under *laws* living under proximity to one another, hence those who are united under a

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<sup>39</sup> [Ref Hobbes]

<sup>40</sup> Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge, Mass: Harvard University Press, 2009, 164; Christian F. Rostbøll, *Immanuel Kant*. Copenhagen: Jurist- og Økonomforbundets Forlag, 2015, 55.



constitution ... [the rules of which are] derived a priori by reason from the ideal of a rightful association of human beings under public laws as such" (MM 6: 355, first emphasis added). We see here both the individualist basis of Kant's conception of Right – its basis in relations of human beings – and that it would be a mistake to understand the international and cosmopolitan levels of Right as independent of this basis, or as mere instrumental additions to the Right of a state.

In terms of exposition, it is true that Kant, before reaching the international and cosmopolitan levels, has made the argument that a public legal order in the form of the sovereign state is a precondition for securing individual rights. Thus, he seems to have committed himself to the view that the sovereign state is not merely a necessary but also a sufficient condition for securing the rights of individuals. This is the case, because the state constitutes its subjects' standing as persons with equal rights of independence. Consequently, when Kant in the Second Definitive Article in "Perpetual Peace" speaks of a federalism of free states, he writes that "states ... already have a rightful constitution internally and hence have outgrown the constraint of others to bring them under a more extended law-governed constitution in accordance with their concept of right" (PP 8: 356).<sup>41</sup> We attain here a picture as if the individual state's internally rightful constitution were a *fait accompli*, which the two other levels of Right must acknowledge and leave as is.

However, it is unsatisfactory to regard domestic Right as conclusively and fully settled independently of international and cosmopolitan Right. It is unsatisfactory, first, because in an interdependent world, we cannot neatly separate the relations a state has to its own subjects and the relations it has to other states, and, second, because a state not only has relations to other states as states but also to their subjects. Kant, of course, acknowledges both of these points. They are the reason for his cosmopolitanism. Thus, he writes, "it has now come so far with the (narrower or wider) community of nations of the earth that a violation of right on *one* place of the earth is felt in *all*," and, thus cosmopolitan right is "a supplement to the unwritten code of the right of a state and the right of nations necessary for the sake of any public human rights [*zum öffentlichen Menschenrechte überhaupt*] and so for perpetual peace" (PP 8: 360).<sup>42</sup> If cosmopolitan Right is necessary for human rights "überhaupt," it makes no sense to regard domestic public Right as a *fait accompli*, which already *conclusively* secures and determines the rights of individual human beings. As Kant himself

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<sup>41</sup> Byrd and Hruschka (*Kant's Doctrine of Right*, 195-6) points out that Kant abandons this position in the "Doctrine of Right." They add that the position in "Perpetual Peace" is beside the point anyway, since logically an internal constitution *cannot* unilaterally govern the state's external relations to other states."

<sup>42</sup> Translation in Kant (1996) revised.

proposes in "Idea for a Universal History with a Cosmopolitan Aim," "The problem of establishing a perfect civil constitution is *dependent on* the problem of a lawful external relation between states and *cannot be solved without the latter*" (Idea 8: 24, emphasis changed).

## V. Beyond the state as "simply a power"

The justification for establishing state authority in Kant is first and foremost that it solves the problem of unilateral acquisition among human beings in the state of nature. In principle, the legal procedures of the state overcome unilaterality by establishing a common and public will that has no purposes of its own but exists only for the sake of maintaining a rightful condition of equal freedom for its members. Things look differently at the international level. Since – or insofar as – the individual states are already rightful conditions with no purpose other than establishing a rightful condition, a state is disanalogous to an individual who has purposes of his or her own. However, seen from the global perspective, the state is still a unilateral will when it enforces its right to territory (and its inhabitants property rights) vis-à-vis other states and their citizens. This is Kant's conundrum, and it is the reason why he says states have "outgrown the constraint of others" (PP 8: 355-6). In other words, the problem is that Kant on the one hand has described the state as possessing an omnilateral will with no purposes of its own and on the other hand cannot deny that from an international and a cosmopolitan perspective, the state must be regarded merely as a particular will.

Perhaps, we could say that the individual states can make rights conclusive for those on their respective territories, while cosmopolitan Right secures only the rights of travelers. This would fit Kant's point that "cosmopolitan right shall be limited to conditions of universal *hospitality*," as the "Third Definitive Article for Perpetual Peace" has it (PP 8: 357).<sup>43</sup> There is a dilemma here, however. The dilemma is that while a state in relation to its own subjects is rightful, in relation to other peoples or states, it is "simply a *power*" (MM 6: 311). In other words, without international and cosmopolitan Right, the state in relation to other states and in relation to foreigners has no claim to legitimacy and authority. One might say that this does not affect the state's relation to its own citizens and its ability to secure *their* rights.<sup>44</sup> But consider

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<sup>43</sup> [See Meckstroh 2017.]

<sup>44</sup> Louis-Philippe Hodgson, "Realizing External Freedom: The Kantian Argument for a World State," In: Elisabeth Ellis, ed. *Kant's Political Theory: Interpretations and Applications*. University Park, Pa: Pennsylvania State University Press, 2012, pp. 108-9, 124.

the paradigmatic case of property rights. A state that grants property rights to its citizen at the same time excludes other states and their citizens from this property.<sup>45</sup> And because a state does this *as a power*, when there is no international and cosmopolitan Right, it acts as a unilateral will against foreigners. The only way to avoid this conclusion is to assume that the state's territorial rights can be seen as somehow given and beyond the need for justification to other states and people. The latter assumption would entail that a state's right to its territory does not raise any question of unilateral acquisition.

The argument that there is no problem of unilateral acquisition among sovereign states relies on the premise that a state's territory is like a person's body which it does not acquire but which it simply has. And, as a result, the state's territory is not in need of omnilateral authorization.<sup>46</sup> But surely, we cannot simply treat a state like a natural person with an innate right to freedom. A state is a conventional and legal entity, and "a state's borders are not natural in the way that a person's body is."<sup>47</sup> When Kant accepts the territorial integrity of a state, he does so not because it has "what is required in order to be called a right" but, rather, because it was "taken to be legitimate according to the public opinion of every state at the time" (PP 8: 347). As Lea Ypi has argued, Kant can only speak of a state's territorial possession in this manner, because he regards it as acquired unilaterally and not innately possessed.<sup>48</sup>

To be sure, Kant does speak of the state as "a trunk [with] its own roots," and "as a moral person" that should not be "made into a thing" (PP 8: 344). However, this well-known paragraph from "Perpetual Peace" ends with the admonition that treating a state as a mere thing that can be acquired by another state through inheritance, exchange, purchase, or donation has the result that "*the subjects* are thereby used and used up as things to be managed at one's discretion" (PP 8: 344, emphasis added). The position that Kant stakes out here is important to understand his anti-colonialism, but I think it would be a mistake to read it as an indication of either a statist or an anti-individualist view. The fact that Kant ends the paragraph in which he speaks of the state as a moral person with how *the subjects* are treated demonstrates that he agrees with the moral individualist view, according to which "all moral wrongs are ultimately wrongs to individuals."<sup>49</sup> The reason why a state should not be made

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<sup>45</sup> Merten Reglitz, "A Kantian Argument Against World Poverty," *European Journal of Political Theory* 2016: 1474885116662566; Lea Ypi, "A Permissive Theory of Territorial Rights," *European Journal of Philosophy* 22/2 (2012), 288-312, pp. 297-302.

<sup>46</sup> Ripstein, *Force and Freedom*, 227-28; Mikalsen, 2017, 16.

<sup>47</sup> Holland, "The Perpetual Peace Puzzle," 608.

<sup>48</sup> Ypi, "A Permissive Theory of Territorial Rights," 304.

<sup>49</sup> Altman and Wellman, 285.

into a thing is that this would make its members into things. Thus, in Kant, as already suggested, the state has no intrinsic value in the sense of ultimate value. Only individual human beings have such value.

Some commentators have attempted to give an individualist, Kantian argument for states' rights to territorial integrity. One such argument derives states' rights from the individual right to freedom as independence. Thus, Louis-Philippe Hodgson writes, "an individual can only be truly independent from the choices of others if the agent that secures her independence is itself independent. In other words, to be genuine, independence must go *all the way up*. A state can thus only perform its function if it is entitled to the same kind of independence as are its citizens."<sup>50</sup> In relation to possession, this means that a state can only make its citizens' property rights conclusive, if its own territorial integrity is secure.<sup>51</sup> While this argument gains plausibility insofar as it does not deny Kant's individualism, I think it is individualist in the wrong way. Thus, Hodgson's argument treats public Right as a mere instrument to the realization of the end of freedom as independence, which he understands independently of the institutions of public Right. In this way, he fails to acknowledge the constitutive relationship between public Right and freedom, as well as what I have called Kant's relational notion of freedom.<sup>52</sup>

Even if Hodgson acknowledged that the relationship between domestic public Right and freedom is constitutive rather than merely causal, the further logic of his argument treats the other two levels of Right, international and cosmopolitan Right, as mere instruments to the primary form of Right, that between the state and its members. Thus, there is the drawback that we have a normative argument for the rightful relationship between the state and its subjects – based on the innate right to freedom as independence – and a merely empirical argument that says that the state to serve its function in relation to its citizens must have territorial integrity. In that case, there is a moral argument for territorial integrity but it is only directed to the subjects of the separate states seen in isolation from one another. The argument the state can give to *other states and their citizens* for its territorial rights and its exclusion of them from their territory can only be an empirical and derivative one: it is functionally necessary for each state to have an independent territory to secure the rights of *its* citizens'. Thereby, this argument privileges one subset of relations of Right at the cost of the others, which means that it does not sufficiently explain how a state can address outsiders in

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<sup>50</sup> Hodgson, "Realizing External Freedom," 114.

<sup>51</sup> Hodgson, "Realizing External Freedom," 116.

<sup>52</sup> Hodgson has a "freedom-based view," which gives freedom independent value and sees public law as instrumental for realizing this value (Zylberman2016: 101-102, 105).

their relations with it, most prominently when the state enforces its territorial integrity against them.

Arguments focusing on the territorial rights of states, including the one just considered, tend to imply that *the only* purpose of international right is to secure and maintain existing boundaries between territorial states – or more precisely, to protect the territorial integrity of *internally legitimate* states.<sup>53</sup> In this way, international Right comes after, and is secondary to, domestic Right and simply makes the independence of the agents (the states) that protect the independence of human beings a matter of lawful arbitration rather than force or war. For the states and their members, international Right has a normative dimension as securing their freedom as independence. But to other individuals, experiencing the coercion to which they are subject *in relation to foreign states*, no direct normative justification is provided. The laws of a foreign state stands for nonmembers as mere force, "simply a *power*." Thus, it is a shortcoming of this argument and this interpretation of Kant that it gives a justification of states' rights only from the perspective of the members of the state *as members* and not to outsiders. This ignores the cosmopolitan condition in which "a violation of right on *one* place of the earth is felt in *all*" (PP 8: 360).

Kant's claim that "a violation of right on *one* place of the earth is felt in *all*" is a favorite among contemporary cosmopolitans,<sup>54</sup> but what exactly does it mean? If we follow the constitutive and relational interpretation, Kant must be speaking of a violation of the rules that regulate the relations in which we stand to one another as interconnected human beings. This violation cannot be understood solely from the first-personal perspective of the individual's feelings or empirical opportunities. Rather, it is a matter of the rights and duties the individual can claim and must accept in her relations with other people and peoples across the globe. A violation of Right on one place of the earth is felt in all, because we are all part of one community in which the standing of each depends on the standing of all. By this is not meant that a breach of law in one place of the earth is necessarily felt in all, but that if a part of the earth rejects being part of the common system of Right then this affects the system as a whole. Those parts of the earth that do not accept the shared tripartite system of Right would affect the standing of the rest of humanity as well.

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<sup>53</sup> This last clarification is important to understand, for example, Anna Stilz' (2011) Kantian argument for territorial rights, "Nations, States, and Territory," *Ethics* 121/3 (2011): 572-601.

<sup>54</sup> See e.g. Martha Nussbaum, "Kant and Cosmopolitanism," in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, ed. James Bohman and Matthias Lutz-Bachmann (Cambridge, MA: MIT Press, 1997), 25.

Yet, Kant clearly does regard state sovereignty as important. One reason for this is that he regards it as contradictory for a state to submit to a coercive global order, because a state is defined by being a supreme authority (PP 8: 354; MM 6: 319). To this, we can reply that sovereignty is not an all or nothing matter,<sup>55</sup> which would help Kant out of his conundrum. Another reason to regard state sovereignty as important is that it could be seen as required as a way to respect the autonomy and self-determination of its members. The state as a rightful condition is a collective achievement of its members and to respect their autonomy, other states should not force them to join juridical-political relations with them.<sup>56</sup> To this argument, we can reply, first, that even if states should not be forced against their will to join global juridical relations, this does not imply that states ought not (freely) enter such relations.<sup>57</sup> Second, the argument for state sovereignty based on respect for the self-determination of its members assumes that only the internal perspective of members matters and ignores the effects of state sovereignty and territorial jurisdiction on non-members.

## VI. Conclusion

Kant's Philosophy of Right contains a unique understanding of the relationship between public law and individual freedom, which we find neither in Kant's own moral philosophy nor in most contemporary cosmopolitan theory. However, among many contemporary Kant scholars, this relationship of co-constitution between Right and freedom is given a statist reading, which does not do justice to the cosmopolitan character of Kant's Philosophy of Right. This is a serious drawback, both because it fails to acknowledge that Kant's Philosophy of Right is inherently and not merely accidentally cosmopolitan, and because our world today is in dire need of an understanding of what Right beyond the nation state could mean.

The suggestion of this paper is that we should extend Kant's concept of "freedom in the external relation of people to one another" from domestic Right to the common end of Right also for the relation between states and between states and non-

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<sup>55</sup> Beitz 1994, 128.

<sup>56</sup> Pauline Kleingeld, "Approaching Perpetual Peace: Kant's Defence of a League of States and his Ideal of a World Federation," *European Journal of Philosophy* 12/3 (2004): 304-25, pp. 309-11; *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012: 53ff; Stilz, "Nations, States, and Territory," 593-7.

<sup>57</sup> Thomas Pogge, "Kant's vision of a just world order," in *The Blackwell Guide to Kant's Ethics*, ed. Thomas E. Hill (Wiley-Blackwell, 2009): 196-208, p. 200. Ypi, 2014, 306-308 [for a critique of Ypi, see Huber 2016, 13.]

members. This means that the core issue of Right, not only at the domestic level but also globally, is what kind of standing persons have vis-à-vis one another, that is, which rights and duties they have in relation to one another. This standing is not merely a moral standing of equal moral worth but rather a standing that is partly constituted and created by a common public legal order, and which can exist only in virtue of a global public legal order. What exact form this global order of Right should have is secondary to the argument made in this paper. The primary issue is that this order of global Right must secure the freedom in the external relation of *all human beings* and must extend to *all the relations* that human beings have with one another. Thus, when we discuss issues of state sovereignty, territorial rights, and global institutions, we must ask how these affect the standing of every single human being in relation to all others. Specifically, we must make sure that none of the relations among persons are lawless and thus left to mere force. Because freedom in Kant is an ordered and rightful relation among persons, cosmopolitanism for him is not a matter of unfettered and unrestricted global action but, rather, a “publicly lawful ... constitution” (PP 8: 358), which secures legally ordered global interaction that respects the institutions that make freedom possible and constitute the equal juridical standing of each and every person in relation to the rest.

What characterizes a truly global and cosmopolitan system of Right is that it does not privilege one subset of relations of Right at the cost of other relations of Right. The latter is what happens in statist accounts, which privilege the external relations of freedom among members of a state at the cost of the relations a state has to other states and non-members. Protecting state sovereignty may for contingent reasons be the best current means for promoting people’s standing as free persons, but in an interconnected world it cannot secure the equal freedom in the external relation of all human beings. In the bounded sphere, which the earth is,<sup>58</sup> the territorial rights of one state and the property rights of its members cannot but affect the territorial rights of other states and the property rights of their members. The cosmopolitan and relational view of Right advanced in this paper requires that we approach this fact not from the limited perspective of the freedom of members of one state at a time but that we take the all-encompassing and systemic perspective of the relations of all human beings.

Thus, we must acknowledge that the sovereign state is not the final answer to how to secure the rights of individuals. If we are to stay true to the fundamental principles of Kant’s Philosophy of Right, we should not treat the sovereign state as capable of establishing conclusive rights for its members. This form of sovereign decision-

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<sup>58</sup> PP, 8: 358.

making will affect not only members but also non-members who will be subject to a mere power, or a unilateral will, which is incompatible with the universal coexistence of freedom in the relation between members and non-members. If Kant's system of Right – and *our* system of Right – is to attain unity at the global level, it cannot give equal weight to the rights of individuals on the one side and the right of states on the other side. It must be committed to the principle of equal freedom in the external relation of all human beings to one another. Hence, all the relations among human beings must be ordered by law, also those that cross state borders. This conclusion becomes inconceivable, if one insists on a morality of sovereign states and denies the individualist basis of Kant's cosmopolitanism.

The conclusion that the system of Right can attain unity only if all three levels of Right in the end are understood with reference to the same principle of equal freedom for individuals should not be misunderstood as an argument in favor of seeing legal cosmopolitanism as directly derived from moral cosmopolitanism. In Kant, a public legal order is not a mere instrument for realizing a pre-conceived principle. Rather, we can only fully conceive of the idea of freedom in the external relation of people to one another with or through a notion of public law. The perspective from which we with Kant should approach the global system is at the same time juridical and individualist. Equal freedom in the external relation of human beings to one another is what Right *means* in all their relations, domestically and globally.